

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 98-7

January 30, 1998

TO: All Regional Directors, Officers-in-Charge,  
and Resident Offices

FROM: Richard A. Siegel, Acting Associate General Counsel

SUBJECT: Mail Ballot Elections

In the recent past, the Board has had occasion to consider several challenges to a Regional Director's decision to conduct the balloting in a representation election by mail. In so doing, the Board considered the impact of Section 11336 of the Casehandling Manual. In London Farm Dairy, 323 NLRB No. 186, the Board, with Member Higgins dissenting, concluded that a Regional Director had not abused his discretion by holding a mail ballot election, over the objections of one party, where in a unit of over-the-road drivers, two of the Employer's four facilities were distant from the Regional Office (199 and 130 miles, respectively) and each of the four was distant from the others, where the extraordinary variations in shifts and starting times of employees required all day balloting over several days, where significant alterations in the work schedules of a significant number of unit employees would have been required to allow for their presence at the polls, thus causing them personal dislocation, and where the conduct of a manual ballot election would have placed an unduly burdensome strain on the resources of the Regional Office.

In Reynolds Wheels International, 323 NLRB No. 187, again with Board Member Higgins dissenting, the Board held that although employees were not scattered geographically and the plant was only 80 miles from the Regional Office, a mail ballot election was appropriate because staggered shifts would require three consecutive days of manual ballot elections. In his dissenting opinions, Member Higgins cited the aforementioned representation casehandling provision and argued that it had not been established that a manual election was infeasible. In Willamette Industries, Inc., 322 NLRB 856 (1997), the Board concluded that standing alone, the fact that an employer's sole facility was 80 miles from the Board's office was not sufficient to warrant the conduct of a mail ballot election.

As you know, the Fiscal Year 1998 budget appropriation to the National Labor Relations Board is inadequate to fully fund traditional Agency activities. The shortfall in budget resources is impacting on all Agency programs from employee benefits to infrastructure maintenance and development. As you also know, the conduct of

representation elections by mail ballot obviates the need for a Board agent to travel to a site often far distant from his or her duty station to conduct manual balloting. Many elections may, therefore, be conducted at less expense to the Agency by the use of mail ballots. Cognizant of the need to conserve Agency budget resources wherever and whenever possible, in the exercise of their discretion to establish the mechanics of the election process, Regional Directors should closely consider directing the conduct of elections by mail ballots if doing so would save Agency funds, consistent with Casehandling Manual Section 11336 and the decisions of the Board, including those discussed above.

If the Regional Director in the exercise of his/her discretion determines that a mail ballot election is appropriate and a necessary party disagrees and refuses to consent to an election providing therefor, the Regional Director should issue a notice of hearing. The mechanics of the election may not be litigated in the hearing. Halliburton Services, 265 NLRB 1154 (1982); Manchester Knitted Fashions, Inc., 108 NLRB 1366 (1954). If the Regional Director's decision following the hearing directs an election, after the decision issues the Director should separately issue a letter directing that the balloting take place by mail and informing the parties of his/her reasons for so doing.

R. A. S.

cc: NLRBU

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